

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DAVID D. AND LINDA D. CORNMAN)

Appearances:

For Appellants: David D. Cornman,
in pro. per.

For Respondent: Terry L. Collins
Counsel

OP I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of David D. and Linda D. Cornman against a proposed assessment of additional personal income tax in the amount of \$222 for the year 1979.

Appeal of David D. and Linda D. Cornman

The issues in this appeal are: (i) whether appellants are taxable on income earned in the State of Alaska during 1974-1977 but not received until 1979; and (ii) whether appellants are entitled to a tax credit for taxes paid to the State of Alaska.

Appellant-husband (hereafter "appellant") worked in Alaska on the Alaska **pipeline** from 1974 through 1977. In 1977 the United States Department of Labor filed a lawsuit against appellant's employer, Bechtel **Incorporated**, claiming that Bechtel had failed to pay premium overtime to certain individuals, including appellant, during their employment periods on the Alaska pipeline. Subsequently, the Department of Labor and Bechtel agreed to a settlement. Appellants, who had by this time become California residents, were notified that upon execution of Mr. Cornman's release he would receive **\$3,547.37** in additional wages. Appellant signed the release on February 12, **1979**.

Appellant received a 1979 Form W-2 from Bechtel showing **\$3,547.37** in wages received in 1979. That form also showed withholding to the State of Alaska in the amount of \$148.99. Appellants reported the amount of wages on their 1979 federal income tax return and on their 1979 Alaska non-resident return.

Respondent determined that appellants had received this additional income in 1979 while residents of California, and, therefore, issued a Notice of Additional Tax Proposed to be Assessed (NPA) on July 9, 1981, increasing appellants' California taxable income by the **\$3,547.00** amount. Although appellants filed a protest, respondent ultimately affirmed its NPA, leading to the filing of this appeal.

Appellant argues that since the questioned income was earned while he was a resident of Alaska, it was proper for him to have filed an Alaska return reporting such income. He also maintains that he should be allowed a credit against his California tax liability for the taxes withheld by the State of Alaska on that income. For the reasons stated below, we reject appellant's contentions.

Pursuant to section 17041, subdivision (a), of the Revenue and Taxation Code, California residents are taxable on all income from whatever source derived. Cash basis taxpayers, such as appellants, generally report income in the year in which it is actually or constructively

Appeal of David D. and Linda D. Cornman

received. (Rev. & Tax. Code, § 17571; Treas. Reg. § 1.446-1(c)(1)(i).) In the case of income, the right to which is to be determined through litigation, the income is not considered to be received by a taxpayer until he has a right to demand payment of the funds. (North American Oil Consolidated v. Burnet, 286 U.S. 417 [76 L.Ed.1197] (1932); ~~Appeal of Richard W. and Hazel R. Hill~~, Cal. St. Bd. of Equal., Nov. 6, 1970.)

Since payment of the disputed income was first available to appellants in 1979, it could not be considered received by them until that year. Since they were residents of California for that year, taxable on income from all sources, it is clear that the income was taxable by California.

In regard to the claim that appellants should be allowed a credit against their California income tax liability for taxes withheld by the State of Alaska, we first note that the allowance of such a credit requires, among other things, that the subject net income taxes have been imposed by and paid to another state. (Rev. & Tax. Code, § 18001, subd. (a).) The term "imposed by," in this context, refers to ultimate tax liability, not to the amount of tax withheld. (Appeal of Daniel W. Fessler, Cal. St. Bd. of Equal., May 19, 1981.) Effective for the year 1979, the Alaska Legislature enacted Chapters 1 and 2, Laws 1980, 2nd Special Session, which repealed the Alaska net income tax on individuals. Furthermore, the State of Alaska automatically refunded 1979 income taxes paid on returns filed on or before May 1, 1981. (Alaska Tax Rep. (CCH) ¶ 10-225.) Appellants filed their 1979 Alaska return in February of 1980, and admit that they probably received such a refund. Under these circumstances, it is clear that appellants had no income tax liability whatsoever to the State of Alaska. Consequently, they have not shown the imposition of any tax by another state that would entitle them to a credit pursuant to section 18001 of the Revenue and Taxation Code.

Based on the foregoing, we find that respondent's proposed **assessment** must be upheld and that appellants were not entitled to the credit claimed against their California income tax liability.

Appeal of David D. and Linda D. Cornman

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of David D. and Linda D. **Cornman** against a proposed assessment of additional personal income tax in the amount of \$222 for the year 1979, be and the same is hereby sustained.

'Done at Sacramento, California, this 28th day of February , 1984, by the State Board of Equalization, with Board Members Mr. **Nevins**, Mr. Dronenburg, Mr. Collis, Mr. Bennett and-Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9